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CURRENT TOPICS

County Court Delays

THE first interim report of the Committee on County Court Procedure, appointed under the chairmanship of Mr. Justice AUSTIN JONES in April, 1947, was published on 23rd July. It recommends that the county court judge should keep the arrangement of his list under his own supervision and that the chief clerk should be responsible to the registrar and the registrar to the judge for the arrangement of lists, to avoid adjournments for want of time. The list, it is suggested, should be kept under continuous review for about a week before the hearing date, and a copy of the revised list should be posted in the court office and kept up to date. Cases, it is further stated, should be grouped for hearing according to their nature and probable length, and times should be assigned accordingly to each substantial case and to groups of cases, with due regard to witnesses' and parties' convenience. An excessive number of cases, it is said, should not be assigned to a single hearing day and some days should be set aside for the hearing of cases of unusual length. Most of the recommendations are already the practice in efficient county courts, and the committee will have a difficult task to make final recommendations which will obviate the state of affairs, disclosed in the interim report, in which a full day's work collapses inside half-an-hour. Most answers to inquiries about the length or substance of cases are in the nature of prophecy, in which there is often all too little material from which to draw a conclusion. The speed or slowness with which a list in the county court is finished depends in the last resort on an amalgam of the experience and personalities of judge, counsel and witnesses. We shall await the committee's final report with some interest.

Commission Sharing and the Stock Exchange

AMONG the significant facts revealed in the statement issued on 21st July by the Council of the Stock Exchange on agency and commission rules is that of a total of 3,922 members as many as 1,667 signed a petition asking that the recent alterations to the rules governing agency and commission be rescinded. Of 1,745 brokers, 813 signed the petition, and of 822 members associated with brokers, 307 signed. Of 902 jobbers, 412 signed, and of 227 associated with jobbers, 97 signed. Of 226 members not in business, 38 signed. It is fair to add that the council state that they have unsuccessfully searched for a means of compromise and have considered a referendum or ballot only to reject it because the matter was too complicated for a simple answer, yes or no. The council recognise the weight and influential character of the signatures, but believe that it is equalled by that of those supporting the amendments. The council, however, do not even mention the possibility that the figures may be a strong indication of a majority opinion against the new rules. They compare the alterations made in 1912, 1932 and 1941 pursuant to the policy of improving the working conditions and the standing of the Stock Exchange. The new prohibition against sharing commissions is, the council believe, the only means of relieving members in view of the steadily increasing costs of carrying on business. They conclude by pointing out that the general register remains open under conditions that are expected to enable a large number of general agents to remain on it, and that in every case of hardship it is their intention to be as sympathetic as possible within the limits of the principles laid down.

The Magistrates' Courts and Women Solicitors

WOMEN solicitors are a familiar sight in the magistrates' courts, and their ability has earned the admiration of their colleagues of the opposite sex. It is a great advance, since the 1920 Act, which removed women's disqualifications, that the useful services rendered by women solicitors, particularly in husband-and-wife and guardianship-of-infant cases, are now almost universally recognised. A tribute was paid by the MAYOR OF RIPON, on 11th July, when, in welcoming members of the Yorkshire Divisional Council of Business and Professional Women's Clubs to their summer meeting, he said that it would be an advantage to the administration of justice if more women solicitors practised in magistrates' courts. He added that Ripon's women magistrates were doing a good job of work and doing it well. There was a general need for more women justices. Most practitioners will agree that with the heavier responsibilities that have been put upon the shoulders of magistrates in the last fifty years with regard to the protection of child life and welfare and the maintenance wherever possible of the family unit, the woman's point of view has been more than ever needed in the magistrates' courts. In those courts women have a unique opportunity as well as a certain responsibility, and their presence and valuable assistance, whether as solicitors or as magistrates, will always be welcomed.

Legal Aid: A Suggestion

A POINT in relation to legal aid which needs more emphasis than it has hitherto received was mentioned by Mr. FRANK POWELL on 23rd July at Clerkenwell Magistrates' Court when granting a certificate for free legal aid. He said he would like to see the law on free legal aid altered to provide that, if it was found that a man would have been able to pay for his

defence, and he was convicted, the State could recover the cost from him. The means of checking an applicant's statement as to his ability to pay his own legal expenses are much less adequate in criminal cases than in civil matters. Under the Poor Prisoners' Defence Act, 1903, magistrates and judges have tended to lend less emphasis to the financial side of the matter than to the question whether a defence of any substance is raised. The simple check of police evidence or, even better, of a probation officer's report could be applied, at the relatively small cost, if necessary, of a week's remand in a doubtful case for further investigation. It seems anomalous, and in this we agree heartily with the learned magistrate, that it should be possible to order a defendant to pay the prosecution's costs with little or no inquiry as to his means, and in a similar case, if the defendant thinks fit to apply, to provide him with free legal aid for his defence.

Allotment Letters

TRUSTEES and solicitors acting for them may find that a failure to deal adequately with allotment letters is a very expensive matter. And it is easy to fail. The allotment letter is sent to the first-named trustee who may be a busy man, well used to putting circulars from companies in the waste paper basket without opening the letter. Where the first-named trustee is a solicitor it is frequently difficult to know to what trust the holding in question belongs. The letter may then be put on one side and forgotten until it is too late. If the trustees decide not to buy the new shares the matter does not necessarily end there. They must remember that the allotment rights may be valuable. A case recently came to our notice where trustees were allotted 1,000 shares of five shillings each at par in a company, and the allotment rights were worth £3 a share. Failure by the trustees to sell these rights would cost them £3,000.

The Children Act, 1948

THE new legislation for the protection of children deserves to be widely known. To this end the Home Office have circularised county and county borough councils (excluding the London County Council) with explanatory details of the main changes brought about by the Act in relation to child life protection and the immediate action to be taken by local authorities to make known the obligations placed upon persons concerned with the children now brought under supervision (Home Office Circular No. 162 of 1948, issued on 16th July). Reference is made to the Children Act (Compensation to Officers) Regulations, 1948 (S.I. No. 1501) and the Children Act (Transfer and Superannuation of Officers) Regulations, 1948 (S.I. No. 1502), which will be the subject of a separate circular. The 1948 Act extends the scope of the child life protection provisions to new classes of children (see s. 37 and Sched. II). Of some legal interest is the provision in para. 10 (7) of Sched. II, under which any contract of insurance on the life of a child, if it was entered into before the 5th July, 1948, will not be voided under s. 214 of the Public Health Act by reason only that under s. 35 or s. 37 of the Children Act the child becomes a foster child. The circular asks local authorities to draw the attention of the public to the new child life protection provisions by advertisements in local newspapers, notices posted in suitable places and leaflets for issue to inquirers. Expenditure incurred in the terms of the circular will rank for grant. An appendix sets out the sort of information which should be included in any advertisement. This is in clear language, in the form of question and answer, and is a model of the manner in which information on legal subjects should be conveyed to the public.

Government Correspondence

EVERYONE, writes Sir ERNEST GOWERS, ought to read the pamphlet recently published by the Institute of Public Administration (18, Ashley Place, Westminster, S.W.1, price 1s.) and entitled "Your Obedient Servant." It commences with a *tu quoque* which some solicitors may resent, partly because of its truth. "Government Departments," it is said, "are often slow in answering their correspondence; so, when you come to think of it, are some solicitors." Perhaps this observation will tend to cure "some solicitors" of their unpunctuality. Of the faults that are found with Government correspondence—unhelpfulness, brusqueness, rudeness and the use of jargon—it is said to be an explanation, but not an excuse, that they are of equally frequent occurrence in private enterprise. Reasons for delay are examined in the pamphlet—the necessity for record, investigation and uniformity of treatment—and the organisation of the civil service is analysed critically and with much constructive imagination. The pamphlet is more stern with the leaning of the civil service towards jargon, such as "the matter is under active consideration," which, it is said, sometimes means "we are trying to find the file." "Official forms," the writer says, "have become something of a scandal," though there are signs that the problem is now being taken firmly in hand. As solicitors have to conduct so much correspondence nowadays with Departments of State, they should read the hints at the end of the pamphlet as to how the citizen may help. Above all, we are asked to remember that civil servants are human beings. A constant realisation of the fact of their common humanity by both civil servants and the public will go far towards making the machinery of government more efficient.

Recent Decisions

In *Hamps* v. *Darby*, on 19th July (*The Times*, 20th July), the Court of Appeal (the MASTER OF THE ROLLS, and WROTTESLEY and EVERSHED, L.JJ.) upheld the judgment of a county court judge awarding to the owner of homing pigeons £200 damages against a farmer who had shot them in the course of protecting his crops. The court held that an owner of tamed and reclaimed pigeons had property in and possession of the birds after they had flown from his dovecote so long as they retained an *animus revertendi* to his control, and there was evidence to support the finding of the county court judge that the defendant had failed to justify the shooting.

In the Court of Appeal on 19th July (*The Times*, 20th July), SCOTT and ASQUITH, L.JJ., expressed the opinion (JENKINS, J. dissenting) that the system of granting building licences was of doubtful legality because the circulars and notes for the guidance of local authorities contained sub-delegated legislation in two respects—the elaboration of their instructions and their effective delegation of the power and discretion to local authorities to perform the functions of licensing. There should be compulsory publicity but the public at the material time had no right of access to these documents. Regulation 56A of the Defence (General) Regulations, 1939, authorised the Minister of Works to choose his own servants for the detailed tasks involved in the issue of licences, but not to transfer his own functions either to the Minister of Health or to the local authorities. The court held that a building licence must be in writing and any oral licence over the telephone was invalid.

In *Lee* v. *K. Carter, Ltd., and Another*, on 21st July (*The Times*, 22nd July), in the Court of Appeal (TUCKER, BUCKNILL and SOMERVELL, L.JJ.), it was held that, where a company was tenant of a residential flat for a term of seven years, subject to a condition against assigning or sub-letting without the landlord's previous written consent, such consent not to be unreasonably withheld, an assignment two months before the expiry of the lease without the landlord's consent to the secretary of the company, who was also a director, and who had, with the landlord's knowledge and consent, lived in the flat since the commencement of the lease, could not be upheld because the landlord's refusal of consent was connected with the proposed assignee and the use to be made of the property within *Houlder Brothers* v. *Gibbs* [1925] Ch. 198 and 584, in that when the lease came to an end the secretary would become a tenant who had the protection of the Rent Restrictions Acts.

CONTRIBUTORY NEGLIGENCE OF INVITEES

THREE recent cases, *Jerred and Others* v. *Dent & Son, Ltd.* [1948] 2 All E.R. 104, *Grant* v. *Sun Shipping Co., Ltd., ibid.*, p. 238, and *Lavender* v. *Diamints, Ltd.* (1948), 92 SOL. J. 362, have at least two features in common. Each comprises a claim by an invitee against an occupier for damages for negligence and breach of statutory duty, and in each case the defence of contributory negligence is discussed. In the first two cases named this defence failed; in the third it succeeded in effect. Yet it was only in the third case that the Law Reform (Contributory Negligence) Act, 1945, was relevant. In *Grant's* case the events giving rise to the claim took place before the 15th June, 1945, a day which the common lawyer must ring in red on his mental calendar, for it marks the change in the law of contributory negligence. In respect of acts occurring on or after that date, a claim is not to be defeated because of the plaintiff's fault where the damage results partly from that fault and partly from the defendant's, but in that event the damages are to be reduced to such extent as the court thinks just and equitable having regard to the plaintiff's share in the responsibility for the damage. How then was the claim in *Lavender* v. *Diamints* defeated? The answer is that, as will be presently explained, Denning, J., regarding the plaintiff's share as the whole responsibility, reduced the damages to such extent that they became nothing.

One or two preliminary propositions may clear the ground for a brief consideration of the complicated facts of these cases. In the first place, the defence of contributory negligence was available at common law whether the claim was founded on negligence proper or breach of statutory duty (*Caswell* v. *Powell Duffryn Associated Collieries, Ltd.* [1940] A.C. 152; *Sparks* v. *Edward Ash, Ltd.* [1943] K.B. 223), or even, as in the original case of *Butterfield* v. *Forrester* (1809), 11 East 60, on nuisance. The interpretation section of the Law Reform Act defines "fault" as "negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort or would, apart from this Act, give rise to the defence of contributory negligence." There is more in the last alternative than meets the casual eye. Not only is the antithesis between matters entailing liability and matters affording a defence called for by the use of the word "fault" to cover an act of either party to an action. It is reasonably clear that the essentials of actionable negligence are not always necessary ingredients of contributory negligence. The latter, for instance, need involve no breach of a common-law duty, though, as Atkinson, J., implies in *Jerred's* case (at p. 109), if the "fault" of the plaintiff is alleged to consist of the breach of a *statutory* duty it is relevant to inquire whether that duty was owed to the defendants. Contributory negligence is present if the plaintiff "do not himself use common and ordinary caution to be in the right," to use the words of Lord Ellenborough in *Butterfield* v. *Forrester, supra*. It consists of the lack of this caution "materially contributing to the injury" (*per* Lord Porter in *Caswell's* case, *supra*).

The problem of balancing correctly the "faults" of opposing parties to an action was for long complicated by a rule supposedly derived from *Davies* v. *Mann* (1842), 10 M. & W. 546, where the plaintiff succeeded in retaining before the court *in banc* the verdict of a jury which had been directed that the mere fact of his negligence in leaving a donkey tethered on a public highway was no answer to his claim unless the donkey's presence was the immediate cause of the injury which ensued when the defendant, negligently driving his wagon, collided with the unfortunate beast. This was thought by many to indicate that the decisive fault lay always with the party having the last opportunity of avoiding the disaster, subject to the gloss applied by *British Columbia Electric Railway* v. *Loach* [1916] 1 A.C. 719, namely, that a prior act of negligence could "crystallise" subsequently so as to constitute the last opportunity. It was in *Swadling* v. *Cooper* [1931] A.C. 1 that this view was exposed as a generalisation from inadequate premises, for in that case there had not elapsed a sufficient interval of time between the respective acts of the parties to enable the determining fault to be assigned to one rather than the other on any basis of chronology. Viscount Simon's speech in *Admiralty Commissioners* v. *North of Scotland Co.* [1947] 2 All E.R. 350 (a case which has not received the notice due to its importance) shows clearly that the true test is not one of time but of responsibility. The question is simply whose act caused the wrong?

In all three cases with which this article is chiefly concerned the claimants were clearly in the position of invitees *vis-à-vis* the principal defending parties. Some other useful illustrations of this relationship have come to light in recent reports. Thus in *Hyett* v. *G.W.R.* (1947), 91 SOL. J. 434, an employee of railway wagon repairers engaged in repairing privately owned wagons which, however, formed part of a pool of rolling stock liable to requisition by the railway company on whose premises they were situated at the relevant time, was the company's invitee. Again, a child aged seven who, visiting a travelling circus in a field where no lavatory accommodation was provided, proceeded in search of a quiet place in which to relieve herself and in so doing passed into a suitable place which formed part of the field, but which the circus proprietors had obviously not contemplated or intended that patrons should visit and which was not adequately marked off, was held in these very special circumstances to have continued to be an invitee and not to have become a trespasser (*Pearson* v. *Coleman Brothers* (1948), 92 SOL. J. 392). A landlord owes no duty to his tenant's invitees as regards the premises actually let to the tenant (*Howard* v. *Walker* [1947] K.B. 860), though there appears to be some doubt whether the landlord of a block of flats may not be an invitor to persons having business with tenants *qua* staircases, lifts, etc. (contrast the views of Scott and Goddard, L.JJ., in *Haseldine* v. *Daw* [1941] 2 K.B. 343).

In *Jerred's* case, Atkinson, J., had before him an action by five stevedores who had been injured by a hatchway beam which, having been left unsecured during loading operations, became dislodged and fell with some cargo into the hold. The defendants were the employers of the plaintiffs, who alleged against them breach of the relevant regulation imposing a duty to secure the beam. The defendants admitted liability on this ground, but brought in as third parties the owners of the ship, the crew of which had undertaken the work of securing the beams. The defendants alleged that the shipowners were mainly responsible for the accident and claimed indemnity or contribution under the Law Reform (Married Women and Tortfeasors) Act, 1935. The owners' answer was a denial of liability and a contention that the defendants themselves had a good defence to the claim because (they said) the plaintiffs had been guilty of contributory negligence in not observing the statutory regulation obliging them to see that the beam was secure. For our present purpose the most interesting part of the case is the decision of Atkinson, J., that, even if this regulation did impose a duty on the stevedores towards their employers, the latter, having accepted the responsibility of directing the men as to when it was safe to begin, could not have relied on any breach by the men. The plaintiffs were entitled to judgment against the defendants, who recovered nine-tenths of the damages and costs from the third parties.

Grant's case was also an action by a stevedore. Finding in the course of his work that part of an alleyway on a ship was in darkness, the pursuer turned to fetch the light, fell through a hatchway which had been left uncovered by workmen employed by a company of ship repairers who had been at work in the ship earlier in the same day, and was injured. The pursuer alleged against the shipowners breach of their statutory duty to light all parts of the ship efficiently, and against the repairers common-law negligence. In reply to this, both defenders invoked allegations of contributory negligence on the part of the pursuer and both also contended that the other defender should be held solely responsible, the shipowner on the ground that the repairers were also in breach of the regulations and were chiefly to blame, and the

repairers on the ground that the failure of the owners' servants to see that the hatch was left covered was the essential cause of the accident. Again the remarks of the learned lords on the issue of contributory negligence are what chiefly concern us here. The vital question is one of fact, and the characteristics of the type of person affected are held to be relevant considerations. The pursuer could not be blamed for assuming that the statutory regulations had been complied with by those responsible, nor, according to the view of Lord Porter, for acting instinctively—" everyone acts constantly on the instincts gained by a lifetime of experience." In the result the damages were apportioned under the Scottish equivalent of our 1935 Law Reform Act, the repairers contributing 75 per cent.

Lavender v. *Diamints, Ltd.*, was a very different case. There a window cleaner, an independent contractor, fell while traversing asbestos roofing on the defendants' premises, having cleaned their windows pursuant to a contract with them. To his claim based on common-law negligence and on breach of the statutory duty of providing a safe means of access, the defendants pleaded that the accident was caused by the plaintiff's own negligence. The findings of Denning, J., were that there was no liability on the defendants at common law, but that they had broken their statutory duty which was owed to an independent contractor as well as to their employees and others. The plaintiff had, however, himself laid out the job and was using his own appliances. The learned judge held that he was guilty of the negligence which was the decisive cause of the injury. That being so, the effect of the 1945 Act had to be considered. Though, in contrast with the Tortfeasors Act of 1935, the Contributory Negligence Act did not expressly refer to a complete indemnity, his lordship interpreted it on parallel lines with the earlier Act. He did not think it necessary to award the plaintiff a nominal figure and dismissed the action with costs.

J. F. J.

CONSENTS TO EXERCISE OF TRUSTEES' POWERS

THE exercise of trustees' powers is frequently made subject, by the terms of the trust instrument, to the consent of some other party, in many cases the life tenant. Such a requirement of consent is, of course, common form in relation to express powers of advancement, as well as a condition of the exercise of the statutory power ; it occurs also quite often with general powers of investment, and may be imposed as a condition of the exercise of any particular powers given to trustees. These rights of consent fairly often cause trouble of one kind or another, and various questions of practical importance and some difficulty arise in regard to them—as to the effect of an assignment of an interest to which such a right is appendant ; whether such rights can be delegated or released ; and whether in special circumstances trustees may be excused for acting without the required consent.

The authorities are clearest on the first of these questions. The decisions in *Re Cooper* (1884), 27 Ch. D. 565, and *Re Bedingfield* [1893] 2 Ch. 332, finally confirmed the rule that if X has a beneficial interest in a trust coupled with the right of consent to the exercise of certain powers by the trustees, and X assigns his interest to Y, the consents of both X and Y are necessary to the exercise of such powers, if such exercise could possibly detrimentally affect Y's interests. *Re Cooper* related to the consent of a life tenant, who had become bankrupt, to the exercise of an express power of advancement, and it was held that the consent of the trustee in bankruptcy was necessary to the exercise of the power, the life tenant being willing to concur. The same principle was applied in *Re Bedingfield*, as well as in some earlier cases reviewed there and in *Re Cooper*, to a consent required for the exercise of a power of sale, although the prospect of prejudice to the assignee's interest was less direct. It is to be noted that in both these cases the consent of the original owner of the interest was held to be still necessary in addition to that of his assignee—expressly by North, J., in *Re Bedingfield* at p. 340, and by implication in the judgment in *Re Cooper*. This point was again emphasised in *Re Forster* [1942] Ch. 199, where *Re Cooper* and earlier cases were reviewed. A further inference to be drawn from these decisions is that a right of consent is itself a " power " in the legal sense, as well as a condition of the exercise of other powers, the previous decisions cited in the judgment and treated as relevant including some relating to substantive powers, such as powers of appointment or of sale.

The question whether a power of consent may be delegated can fairly certainly be answered in the negative. There is, indeed, little direct authority on this point, and the venerable case of *Hawkins* v. *Kemp* (1803), 3 East 410, sometimes cited as authority for the proposition that a power of consent to the exercise of other powers may not be delegated (as in Halsbury, 2nd ed., vol. XXV, p. 526), actually concerned the consent of trustees of a term of years under a settlement, who as trustees would naturally have been held unable to delegate their functions. But in any case, treating a power of consent as a power in the full sense, it would follow, on the general principles relating to delegation of powers, that, being a limited power involving the exercise of some discretion, it cannot be delegated, whether its holder be a person in a fiduciary position or not (though, of course, if the holder be a trustee, the statutory power of delegation while abroad provided for in s. 25 of the Trustee Act, 1925, would apply). The same result is reached by another route if the power of consent is viewed in its alternative aspect, as a condition of the exercise of the substantive power, for here we meet the rule that all such conditions must be strictly complied with—as Lord Ellenborough's judgment in *Hawkins* v. *Kemp*, *supra*, at p. 440, also emphasised. It seems to follow from this rule that if, e.g., trustees are required to invest with the consent of A, no act of A by power of attorney or otherwise can substitute the consent of B as a fulfilment of this condition.

Release of powers of consent might at first sight seem a simple matter, for, as a result of s. 155 of the Law of Property Act, 1925, all powers can be released other than those coupled with a duty to exercise them, and powers of consent, other than those vested in trustees, would not normally be of the latter class. But here again we have to contend with the fact that the consent is not only a power, but a condition of the exercise of other powers, and the question is whether it can be released so as to leave the substantive power intact. The point seems to be devoid of direct authority. The old case of *Child* v. *Child* (1855), 20 Beav. 50, where it was held that a prospective consent given in general terms was invalid, tells somewhat against the view that such a release can be effective ; but the circumstances were rather special, the consent involved being that of a wife in respect of a power of lending trust moneys to her husband. Pending further elucidation, it can only be said that it seems somewhat hazardous to exercise a power without the consent on which it is conditional during the " consentor's " life in reliance on a release by him.

Purported releases of a power of consent are likely to be rare. A problem more frequently confronting trustees occurs where it is impossible for some reason to communicate with the " consentor " (a difficulty especially familiar in war-time) or to procure a reply from him. Here, again, there appears to be no general rule of dispensation—in normal circumstances, if the consent cannot, for whatever reason, be obtained, the power cannot validly be exercised. In *Re Rogers* [1915] 2 Ch. 437, Neville, J., dealing with the power of a life tenant to consent to sales and investments, stated that her power to withhold consent was absolute even in the case of investment (though he assumed that the only sufferer through the refusal of consent would be herself—which might not be the position in all cases of such refusal). This was a hypothetical instance of deliberate refusal, but the same view was held in *Re Forster*, *supra*, where a life tenant whose consent was required to the

exercise of a power of advancement was an enemy alien, and her place of residence was unknown, it being even doubtful if she was alive. Here Morton, J., as he then was, could find no ground for allowing an advancement to be made without the required consent, even though the advance was urgently needed, and the life tenant was not the mother of the infant concerned. A suggestion that if the life tenant's interest were vested in the Custodian of Enemy Property he might consent in her place was held to be impracticable owing to the doctrine in *Re Cooper*, *supra*, requiring the consent of the original owner of the interest to which the power of consent was appendant, even after assignment.

On the other hand, the court has dispensed with the necessity of a consent to variation of investments, where the calling in of a hazardous security appeared necessary for the protection of the trust fund, as in *Harrison* v. *Thexton* (1858), 4 Jur. (N.S.) 550, and *Costello* v. *O'Rorke* (1869), 3 Ir. R. Eq. 172. The principle of these decisions is obvious common sense, but it seems unlikely to be extended beyond cases of virtual necessity, where the exercise of the substantive power is urgently required in the interests of the trust as a whole. There is, however, a readier, though fortuitous, aid on which trustees may rely when faced with the problem of investing trust money, or varying investments, where a required consent cannot in the circumstances be obtained. This is provided by s. 35 of the Finance Act, 1917, and s. 4 of the National Loans Act, 1939 (extended by the National Loans Acts, 1940–1945), which exempt trustees from liability in respect of their subscribing for or investing in the war-time Government loans covered by those Acts, notwithstanding the provisions of any trust instrument and without the consent of any person, though required by the trust instrument. Each section also includes in its protection a sale of existing investments for the purpose of subscribing for or investing in the securities in question. Thus an emergency means is provided (so long as the loans covered by these sections remain outstanding) of overcoming the difficulty of a disappearing or defaulting "consentor" in the exercise of plain powers of selling or varying investments.

H. B. W.

AGRICULTURE ACT, 1947, AND TENANCIES FOR LESS THAN ONE YEAR

ONE of the beneficial provisions of the Agricultural Holdings Act, 1923, is s. 25, which gives security of tenure to a tenant of an agricultural holding by providing that, notwithstanding any provision in a contract of tenancy to the contrary, a notice to quit, whether given by the landlord or the tenant, is invalid if it purports to determine the tenancy before the expiration of twelve months from the end of the then current year of tenancy. By subs. (2) of the section, this provision does not apply where possession of the land is required for the purposes of government departments, local authorities, or statutory undertakers, or where a receiving order in bankruptcy is made against the tenant.

"Contract of tenancy" is defined as a letting of or agreement for letting land for a term of years or for lives or for lives and years, or from year to year. While the provision afforded a proper and reasonable safeguard for an agricultural tenant it often happened that for quite proper reasons it was desired to contract out of the Act. In some cases the land was let for a period of eleven months and after the expiration of that period the lessor would grant a completely new tenancy. In *Land Settlement Association, Ltd.* v. *Carr* [1944] K.B. 657, however, the Court of Appeal approved a far more convenient method. In that case the plaintiff association developed a small holdings scheme on a co-operative basis, and for the purposes of the scheme required to retake possession as soon as possible of the holdings of which the tenants proved unsuitable for the purpose. The holding was let to the defendant for a period of 364 days and thereafter for successive periods of 364 days determinable nevertheless as provided in the agreement. The provision for determination was that the agreement might be determined by either party at any time during the currency of the said term or successive period on giving three calendar months' previous notice in writing. The letting commenced on 1st October, 1939, and on 23rd August, 1943, the association gave the defendant notice to quit on 30th November, 1943. The defendant contended that the Agricultural Holdings Act, 1923, applied, and that the notice was insufficient in length and further, that, in any event, the notice should have expired with one of the periods of 364 days. The Court of Appeal held that the Agricultural Holdings Act, 1923, did not apply to this letting, which was not a letting for a term of years or from year to year and that as the provision for notice to quit provided for notice at any time it was not necessary that notice should expire at the expiration of one of the periods of 364 days.

The agreement in *Land Settlement Association, Ltd.* v. *Carr* has been adopted by conveyancers as a convenient method of contracting out of the provisions of the Act of 1923, particularly in cases where land has been let to communities working on a co-operative basis, where the absence of power to obtain possession from a tenant who could not successfully work the scheme would be fatal to the successful working of the scheme as a whole.

This freedom of contracting out of the Agricultural Holdings Act, 1923, is substantially curtailed by the Agriculture Act, 1947. Section 31 (9) provides that paras. (*a*) and (*b*) of subs. (2) of s. 25 of the Act of 1923 (which provides that twelve months' notice to terminate the tenancy of a holding shall not be required in the case of land of which possession is resumed for the purposes of government departments, local authorities or statutory undertakers) shall cease to have effect except in the case of a tenancy subsisting under a contract entered into before 25th March, 1947.

Section 40 provides that where, under an agreement made after the commencement of that part of the Act [1st March, 1948], any land is let to a person for use as agricultural land for an interest less than a tenancy from year to year, or a person is granted a licence to occupy land for use as agricultural land, and the circumstances are such that if his interest were a tenancy from year to year he would, in respect of that land, be the tenant of a holding as defined in the Act of 1923, then, unless the letting or grant was approved by the Minister of Agriculture and Fisheries before the agreement was entered into, the agreement shall take effect, with the necessary modifications, as if it were an agreement for the letting of the land for a tenancy from year to year. The section will not have effect in relation to an agreement for the letting of land, or the granting of a licence to occupy land, made (whether or not the agreement expressly so provides) in contemplation of the use of the land only for grazing or mowing during some specified period of the year, or to an agreement for the letting of land, or the granting of a licence to occupy land, by a person whose interest in the land is less than a tenancy from year to year and has not by virtue of this section taken effect as such a tenancy.

It follows that the form of agreement in *Land Settlement Association, Ltd.* v. *Carr* will not be effective in its purpose of avoiding the provisions of the Agricultural Holdings Act, 1923. The object of the section is obviously to extend to tenants of a letting for less than one year the benefits enjoyed by a tenant from year to year, and now that s. 40 of the 1947 Act has come into force, it will be necessary to obtain the approval of the Minister of Agriculture to a letting of land for an interest less than a tenancy from year to year if these provisions are to be avoided.

The words " unless the letting or grant was approved by the Minister " suggest that each letting must be the subject of specific approval by the Minister. Section 40 does not provide for any retrospective effect, and it would appear that if the successive period of 364 days comes into effect by virtue of an agreement made before 1st March, 1948, when the section came into operation, such an agreement will continue to be outside the provisions of the Agricultural Holdings Acts, 1923 to 1947 (to be consolidated shortly in the Agricultural Holdings Act, 1948).

L. C.

Company Law and Practice

THE ACCOUNTS PROVISIONS OF THE COMPANIES ACT, 1948

THE BALANCE SHEET—I

THE readers of these articles may have thought that they have noticed a tendency to ignore the provisions as to accounts of the Companies Act, 1948. Such a tendency can be justified up to a point for many of the matters of detail, and in particular those contained in Sched. VIII, do come rather more in the province of accountants than in that of lawyers. Even lawyers, however, will have to attempt to master the general outlines of the provisions, and the object of this and the following articles will be to examine in a very general way and without going too much into detail how the accounts provisions work.

The simplest course will be to see, first of all, what is required in the case of the simplest type of balance sheet. Under s. 148 (2) the directors of a company are bound to cause a balance sheet to be laid before the company in general meeting in every calendar year. The balance sheet is to be made up as at a date which is determined by the provision as to furnishing a profit and loss account but which is, in fact, in the definitions section, s. 455, called the end of the company's financial year.

Section 149 deals with the general requirements as to the profit and loss account and balance sheet.

Under subs. (1) the balance sheet must give " a true and fair view of the state of the affairs of the company " at that date, and under subs. (2) it has to comply with those requirements of Sched. VIII which are applicable to it.

Leaving on one side for a moment subs. (3) of this section, subs. (4) provides that the Board of Trade may modify any of the requirements in this Act as to accounts, but no such modification is to have the effect of excluding the requirement that the balance sheet is to give a true and fair view of the state of the company's affairs at the end of its financial year. This power will presumably only be exercised on rare occasions in exceptional circumstances. Subsection (5) may, for the present, be disregarded, as that subsection deals only with the profit and loss account and does not affect the question at present under consideration.

Subsection (6) deals with the effect of non-compliance by directors with the requirements of the section, and subs. (7) provides that a reference to a balance sheet is to include notes thereon or documents annexed thereto giving information which must under the Act be given but is allowed to be given in that way.

There remains to be considered subs. (3), and it is by no means easy to follow exactly what this subsection is intended to mean. It opens with the words " save as expressly provided in the following provisions of this section or in Part III of the said Eighth Schedule," and continues, " the requirements of the last foregoing subsection and the said Eighth Schedule shall be without prejudice either to the general requirements of subs. (1) of this section or to any other requirements of this Act."

Ignoring for the moment the opening words, this has the following effect. The " requirement of the last foregoing subsection," i.e., subs. (2), is merely that the requirements of the Schedule are to be observed, and the result, therefore, is that if compliance with any one of the Schedule requirements would involve a true and fair view of the company's affairs not being given, or if any one of those requirements conflicted with any requirements as to accounts found elsewhere in the Act, e.g., as to payments to directors, that requirement need not be complied with. It is by no means easy to imagine circumstances where compliance with a requirement in the Schedule would result in presenting an untrue or unfair view of the company's affairs, but I suppose it is possible.

It is, however, even more difficult to think of any way in which compliance with provisions in the Schedule would make it impossible to comply with other requirements in the Act. Probably, however, the object of this provision is to contain a reminder that not all the accounts requirements will be found in the Schedule. The subsection does, however, provide that there are certain circumstances in which the Schedule requirements are to give way to others.

With regard to the opening words of the subsection quoted above, as will be seen from the brief account of the effect of the subsections above, the words " the following provisions of this section " could only refer to subss. (4) and (5). Subsection (5) may be left on one side for the moment, since it deals only with the profit and loss account, but as will be seen when we come to consider the profit and loss account, it cannot, in fact, refer to that subsection. For present purposes, therefore, " the following provisions " can only mean those in subs. (4), i.e., those empowering the Board of Trade to modify the accounts requirements in particular cases. As that subsection expressly provides that the Board of Trade cannot under subs. (4) exclude the necessity for presenting a true and fair view of the company's affairs, it does not expressly provide that in any circumstances the Schedule requirements may be made to give way to the true and fair view requirement, and the opening words of subs. (3) can therefore only mean, so far as a simple balance sheet is concerned, that if a Schedule requirement conflicts with any other requirement in the Act the Board of Trade may direct that the Schedule requirement shall prevail over the other requirement. In any case, without those opening words, it would, under subs. (4), clearly have had such a power.

In merely considering a simple balance sheet, the reference in the opening words of subs. (3) to Pt. III of the Schedule can be ignored as that part only contains exception for special classes of companies.

Turning now to Sched. VIII, the reference at the beginning of it in the margin is to the following sections : s. 56 (making it necessary to have a share premium account when shares are issued at a premium), s. 149 (the section considered above), s. 152 (contents of group accounts), s. 157 (directors' report to be attached to balance sheet and to state the amount proposed to be carried to reserves within the meaning of the Schedule) and s. 454 (power of the Board of Trade to alter the requirements of the Act as to accounts and not merely, be it hoped, the requirements of the Schedule).

The first paragraph is introductory, but expressly provides as a reminder that the Schedule has effect in addition to the provisions of ss. 196 and 197. Those sections are the ones under which particulars are to be given in the accounts of payments to directors and of loans to officers. In Pt. I of the Schedule the paragraphs that concern the balance sheet are paras. 2 to 11.

Paragraph 2 concerns the general provision that the authorised and issued share capital, liabilities and assets are to be summarised with particulars sufficient to disclose the general nature of the assets and liabilities. Redeemable

preference shares must, however, be specifically referred to with a note stating the earliest date on which the company can redeem them. The amount of the share premium account must be shown and there must also be stated, presumably by way of a note, the particulars of any redeemed debentures which are available for reissue. This paragraph also provides, though this is hardly of general application, that interest paid out of capital under s. 65 must be shown if not dealt with in the profit and loss account.

Under para. 3 various items, so far as not written off, are to be shown under separate headings. These include the preliminary expenses and various other items which arise on any issue of shares or debentures, i.e., the expenses of the issue, commissions paid and discounts allowed. In the event, therefore, of any issue of shares at a premium, there will be shown on the left-hand side of the balance sheet (1) the nominal amount of shares, and (2) the amount of the premiums in the share premium account, and the cash received less the amount of the expenses of the issue will be represented by an item on the right-hand side, and in addition there will be an item for those expenses.

Paragraphs 4, 5, 6 and 7 deal in considerable detail with what information is to be given in the balance sheet as to reserves, provisions, liabilities, fixed assets and current assets, but there is no definition of fixed or current assets. This distinction will not, however, be difficult in most cases to draw, though there may well be border-line cases where it will be difficult to say in which class a particular asset comes.

Separate headings for various miscellaneous matters are required by para. 8. Under this paragraph the company's investments have to be split up into various categories and goodwill, patents and trade marks in so far as not written off must be shown separately. There has also under this paragraph to be shown the aggregate amount of bank loans and overdrafts and the aggregate amount of any outstanding loans authorised to be made under s. 54, which is the section prohibiting, except in certain circumstances, provision of financial assistance by a company for the purchase or subscription of its own shares or shares of its holding company. There must also be shown the net aggregate amount recommended to be distributed by way of dividend.

If any liability of the company is secured on an asset of the company, that fact, but not the asset on which it is secured, is to be stated (para. 9), and if any of the company's debentures are held by a nominee for the company the nominal amount and the book value of those debentures is also to be stated. These pieces of information are required to be given in the accounts.

In contradistinction to this the various matters dealt with by para. 11 may either be stated by way of a note on the accounts or in a statement or report annexed to them. These matters include particulars as to any options on shares of the company and any arrears of preference dividend and are, generally speaking, miscellaneous matters required either to explain or supplement the other information required to be given in the accounts.

S.

A Conveyancer's Diary

POWERS OF ATTORNEY

THE law relating to powers of attorney is not always easy either to find or to carry in one's mind. It was amended and added to very considerably both by the Conveyancing Act, 1881, and by the real property legislation of 1925, but no attempt was made to codify it, and the result is most unsatisfactory from the practitioner's point of view. Not only are the relevant provisions scattered about the statutes dealing with this branch of the law, but they operate with reference to different dates; and it is often a matter of importance to know whether an instrument creating or exercising a power was executed before or after the 1st January, 1926, or 1882, as the case may be. It may be convenient, therefore, to draw attention to the most important of these provisions within the scope of a single article.

The creation of powers of attorney is subject to limitations. An infant cannot generally appoint an attorney, but a married woman, whether an infant or not, has been able to appoint an attorney by deed since 1882 (L.P.A., 1925, s. 129), and there appears to be nothing to prevent her making an irrevocable appointment under *ibid.*, s. 126 or s. 127. The requirement of separate acknowledgement in the case of instruments executed by a married woman has now been abolished (*ibid.*, s. 167). A corporation may appoint an attorney, and an attorney authorised to convey an interest in property on behalf of a corporation will well execute a conveyance if he signs the name of the corporation in the presence of one witness and also, in the case of a deed, affixes his seal thereto (*ibid.*, s. 74 (3)). This provision is permissive, but it often relieves a purchaser from inquiring whether any special requirements (e.g., such as may be prescribed by the memorandum or articles of a particular company) have been complied with. Conversely, a corporation authorised under a power so to do may convey an interest in property on behalf of another person or corporation by an instrument executed by an officer appointed by the governing body for that purpose; and if an instrument appears to have been executed by an officer so appointed, the purchaser need inquire no further (*ibid.*, s. 74 (4)). Subsections (3) and (4) of s. 74 apply to instruments executed after 1925, but it is immaterial when the power under which the instrument was executed was created. In regard to limited companies, s. 34 of the Companies Act, 1948, provides that a company is authorised to appoint an attorney to execute a deed outside the United Kingdom only.

The donee of a power of attorney, whenever created, may execute an instrument in his own name and (where that is required) with his own seal, but statutory powers must be executed in the name of the estate owner, whenever practicable (L.P.A., 1925, s. 124 and s. 7 (4)). This last requirement applies equally to a corporation acting as an attorney under the provisions already mentioned. For instances of statutory powers, see *ibid.*, s. 88 (1) and s. 89 (1) (sales by mortgagees), and S.L.A., 1925, s. 29 (5) (sales by trustees holding land on charitable or public trusts). It is, however, convenient that the donor of the power and not the donee should be named as a party to the instrument, and this should be the rule save in the exceptional case of a donee acting under an irrevocable power on behalf of a donor who is dead at the date of the execution of the instrument. This is perhaps the place to note that in the case of a power given to several persons jointly, all must join in executing the instrument; this is the common-law rule, and it has not been affected by legislation.

As regards the rights of a purchaser on the investigation of title, if any abstracted document was executed under a power of attorney, the power itself, or an office copy of the power (Judicature Act, 1925, s. 219), must be produced: L.P.A., 1925, s. 45 (1). All instruments executed after 1925 conferring a power to dispose of land must be filed at the Central Office unless the instrument relates to one transaction only and is to be handed over to the purchaser on completion; or alternatively such instruments should be filed in the Land Registry if relating to any registered land or charge (*ibid.*, s. 125 (1) and Land Registration Rules, 1925, r. 82). And in all cases except where the land or charge is registered the purchaser is entitled, notwithstanding any stipulation to the contrary, to delivery of any such instrument or an office copy thereof (*ibid.*, s. 125 (2) and Judicature Act, 1925, s. 219). If a power which has been filed at the Central Office has been revoked, the instrument of revocation may be deposited there and a note to that effect placed on the original instrument.

Having dealt with some aspects of the law relating to the creation and exercise of powers of attorney, we can now consider their effect. At common law a power of attorney is revocable at will, and is automatically determined by the death of the donor. This is the ordinary rule applicable to agency, but its inconvenience from the point of view of vendor and purchaser is manifest, and its somewhat harsh simplicity has been much whittled down by legislation.

Section 126 of the L.P.A., 1925, provides that if a power of attorney is given for valuable consideration and expressed to be irrevocable by the instrument whereby it was created, then in favour of a purchaser the power cannot be revoked by the death of the donor or by anything done by him without the concurrence of the donee; and similarly all acts done by the donee in pursuance of the power must, in effect, be treated as validated in favour of the purchaser, notwithstanding any action inconsistent therewith on the part of the donor. The immunity of the purchaser under this section does not in any way depend on notice or the lack of notice. Section 128 enables a power of attorney to be given to a purchaser of any interest in property (not only of an interest in land) and the persons deriving title under him, and an irrevocable power given for value to a purchaser would appear, under the combined effect of these sections, to be equivalent to ownership—at least if, in the case of land, the purchaser also takes the precaution of obtaining possession of the title deeds. Section 127 contains provisions similar in their general effect to those of s. 126 in regard to any power, whether given for value or not, which is expressed by the instrument creating it to be irrevocable for a fixed period not exceeding one year, and which is acted on within that fixed period. Sections 126 and 127 apply to all powers created by instruments executed after 1882. Thus a purchaser is now concerned to inquire whether the donor of a power of attorney was alive at the date when the power was acted on only if either (*a*) the power was created before 1883, or (*b*) the power does not fall within the provisions of s. 126 or s. 127. In the case of a power not expressed to be irrevocable by the instrument creating it, it is also necessary to investigate the circumstances in which the power was exercised with a view to ascertaining whether all the requirements of the instrument which created the power were satisfied when the power was acted on.

These general provisions may, finally, be compared with certain provisions of the Trustee Act, 1925, which enable trustees (including personal representatives: T.A., 1925, s. 68 (17)) to act in certain circumstances by attorney. A trustee intending to remain out of the United Kingdom for at least a month may delegate his office by power of attorney (*ibid.*, s. 25); and the wide power conferred on trustees to employ agents specifically includes a power to appoint a person to act as attorney in the sale, management and administration of all kinds of property, real or personal, in any place outside the United Kingdom (*ibid.*, s. 23 (2)).

"A B C"

Landlord and Tenant Notebook

GOODWILL CLAIMS: CONDITIONS PRECEDENT AND DEFEASANT

"In our view, both the referee and the judge misinterpreted and misapplied it [Landlord and Tenant Act, 1927], in spite of clear guidance from reported cases," said Scott, L.J., in his judgment in *Clift* v. *Taylor* (1948), 92 Sol. J. 361 (C.A.). The judgment gives us a useful survey of the provisions governing the right to compensation for, or to a new lease in lieu of compensation for, goodwill, emphasising their limitations. When the measure was before Parliament, the late Lord Carson expressed the view that it would occasion a million lawsuits. Allowing for native hyperbole, I think it can be said that far less litigation has resulted than was expected; or, at all events, that proceedings instituted have more frequently been settled. (The procedure—county court, tribunal, back to county court—may have something to do with this.) From the practitioner's point of view, perhaps the most difficult problem occasioned by the goodwill provisions has been that of explaining to an over-sanguine tenant the many facts he will have to prove in order to qualify, and the many facts which the landlord might prove which would disqualify him. The position has been summarised by saying that the Act was not passed to enable tenants to reap what they had sown, but rather to prevent landlords from reaping what tenants had sown; wishful thinkers are, however, apt to be allergic to metaphors.

The tenant in *Clift* v. *Taylor* had carried on, for some thirteen years, the business of a teashop on part of the ground floor of a building owned by the respondent. The latter was a land agent, who had during that period carried on his own growing business in the rest of the building. The evidence that his practice had increased considerably was not contradicted: at the beginning of the applicant's lease he had had a staff of nineteen or twenty, when it terminated he had five partners and a staff or forty-one; he needed not only more space, but in particular some accommodation at street level for displaying auction, etc., notices.

In reporting in the tenant's favour and ordering the grant of a new lease, referee and judge had, according to the judgment, ignored the useful analysis given by a Divisional Court in *Whiteman Smith Motor Co., Ltd.* v. *Chaplin* [1934] 2 K.B. 35. Undoubtedly Scrutton and Maugham, L.JJ., did go into the questions before them in that case, but it appears that those questions concerned primarily the method to be employed in assessing the value of adherent goodwill, and the nature of that goodwill ("enuring to the benefit of the landlord"). The statement of facts in *Clift* v. *Taylor* does not suggest that the tenant had not added local goodwill, or that that goodwill would not adhere; but as Scott, L.J., said that there had been no evidence of her compliance with the primary condition, we must take it that there was nothing to assess on those lines. Likewise, *Charrington & Co., Ltd.* v. *Simpson* [1935] A.C. 325, which, as Scott, L.J., said, definitely approved the enure-to-the-benefit-of-the-landlord proposition of *Whiteman Smith Motor Co., Ltd.* v. *Chaplin*, must have affected the matter before the court in a way not made clear to readers of the report; what it emphasised was that adherent goodwill due to extraneous circumstances was not to be made the subject of a claim. Invoking the metaphor, one might say that the landlord was to be allowed to reap what some third party had sown.

Scott, L.J., then gave us a new approach to the matter by drawing a parallel between the provisions governing compensation for improvements and those governing compensation for goodwill. In both cases the premises must be business premises; in both, value must be added to the holding. A change of user had to be taken into account in the case of improvements, intention to use for a different and more profitable purpose (defined by reference to increased rental value) in the case of goodwill. And while improvements cannot give rise to a right to a new lease, the jurisdiction to order the grant of such in the case of goodwill is not only discretionary ("in all the circumstances reasonable"), but subject to a number of conditions: the grant is not to be considered reasonable unless the tenant proves *three facts, or* if the landlord proves *one of four* other facts.

It is here that the judgment will, I believe, prove particularly useful to those who have the unpleasant task of disillusioning hopeful tenants. They may be made to appreciate that if rental value has increased because, say, of improved transport facilities, this will not give them the right to compensation or, consequently, to a new lease. It is rather more

difficult to explain to a tenant that he cannot have a new lease, even if adherent goodwill has been added by his activities, without proving not only that he is a suitable tenant but that monetary compensation would not compensate him if he moved. But his face attains maximum length when he is told that, even if the above conditions are satisfied, he will not get a new lease should the landlord prove *either* that he requires the premises for his own occupation (or that of a son or daughter over eighteen), *or* that he intends to pull down or remodel them, *or* that vacant possession is required in order to carry out a scheme of redevelopment, *or* that for any other reason the grant would not be consistent with good estate management. All are factors which the tenant may not have been able to foresee, still less prevent.

Scott, L.J., considered that the landlord had established both the first and the fourth of these conditions defeasant. On the first, the tenant's answer had included the point that the partnership and not the respondent were to occupy the premises; this objection was brushed aside as, apart from the fact that the firm might be made mere licensees, the partners would (if this were not done) be tenants in common. (One would have expected a reference to *Nuthall* v. *Entertainments and General Investment Corporation* [1947] 2 All E.R. 384, in which Hallett, J., held that a company could occupy premises by another company employed to manage part of its business.) On the fourth: "we cannot imagine a clearer case of bad estate management than a decision by the senior partner to throw away the opportunity given him by the expiration of the tea-shop lease to bring that part of the premises within the firm's business occupation."

This, I suggest, will prove a useful illustration to those faced with the unpleasant task mentioned; though, it appears, the judgment was actually based on the view that the tenant had never qualified for compensation at all: "The chief mistake made by both the referee and the judge in their consideration of the net adherent goodwill was their total failure to realise the difference between the global goodwill which the landlord, if able to give vacant possession with long enough tenure, could have sold in the open market to any purchaser in the same trade or business who wanted the site and the very limited adherent goodwill which might have been of value to the landlord and alone is within s. 4." The report does not tell us enough about the facts and arguments to enable us to appreciate how this came about; but as an illustration of the operation of what I have called conditions defeasant, it will prove most useful.

R. B.

TO-DAY AND YESTERDAY

LOOKING BACK

On 31st July, 1823, William Cobbett was on one of his Rural Rides from the sprawling nastiness of London, which he called "The Wen," into south-east Hampshire. On that day he wrote: "From Worth you come to Crawley along some pretty good land; you then turn to the left and go two miles along the road from the Wen to Brighton; then you turn to the right and go over six of the worst miles in England, which miles terminate but a few hundred yards before you enter Horsham. The first two of these miserable miles go through the estate of Lord Erskine. It is a bare heath with, here and there, in the better parts of it, some scrubby birch. It has been, in part, planted with fir trees which are as ugly as the heath was; and, in short, it is a most villainous tract." This tallies with Lord Campbell's account of the estate of the former Lord Chancellor: "which turned out an unfortunate speculation, for it produced nothing but stunted birch trees and was found irreclaimable. To lessen his loss he set up a manufactory of brooms. One of the men he employed to sell them about the country being taken before a magistrate for doing so without a licence, contrary to the Hawkers and Pedlars Act, he went in person to defend him and contended there was a clause to meet this very case. Being asked which it was, he answered: "The *sweeping* clause, your worship—which is further fortified by a proviso that nothing herein contained shall prevent or be construed to prevent any proprietor of land from vending the produce thereof in any manner that to him shall seem fit."

MIDDLE TEMPLE HALL

In the slow, groping return to what may be called "normal" it is very pleasant to note that the Middle Temple Hall has been restored to use, with its stained glass and most of its pictures, but not yet the great carved screen that was one of its chief glories. That was shattered (though not beyond repair) when a parachute mine, exploding in Elm Court, on 15th October, 1940, devastated the east end of the Hall and badly damaged the clock tower. For some considerable time in those desperate days the hole remained gaping like an open wound. But the worst peril was to come and on the night of 24th March, 1944, during one of the last of the fire raids, several incendiaries lodged in the roof, which was soon blazing fiercely in almost inaccessible places. Only those who were actually present can realise how hopeless seemed the fight to save it as the flames kept breaking out afresh in different places. At one time the floor was ankle deep in water and ashes into which every now and then a great lump of charred timber would fall from the roof. Luckily, the double-hammer beams never caught alight and by morning the fire was out. Externally the restoration is following the pre-war design, the buildings east of the Hall, put up in 1831, and the entrance tower, put up in 1832, returning to their former aspect. There has apparently been no question of reverting to the Georgian style of the 18th century clock tower or the yet earlier design rather reminiscent of Old Buildings in Lincoln's Inn. It was in the 18th century that the Hall itself first acquired its present castellated parapet.

OTHER RESTORATIONS

Talking of restorations, it was excellent news to hear that Staple Inn Hall is to be restored as the home of the Society of Actuaries, which celebrated its centenary this year. The announcement was recently made and a drawing of the proposed design was published in *The Times*. With very little alteration, it appears to follow the lines of the Hall destroyed by a flying-bomb in 1944. It was not a case of a direct hit and one gained the impression at the time that the Elizabethan roof timbers were not beyond salvaging. This little Hall in its back-water surroundings had singular charm and deserves to rise again. One rather puzzling feature of the new design is a sunk garden, which appears to be intended for the courtyard, no doubt to match the one on the south side of the Inn. The courtyard hardly looks as if it would lend itself to that sort of treatment. Another suggestion mooted in *The Times* recently is that old Temple Bar, which was removed from Fleet Street in 1878 and set up as the entrance of Theobalds Park, in Hertfordshire, should be returned to London and incorporated in the restoration of the Temple. It would certainly give a graceful finish to the foot of Middle Temple Lane and its contrasting charm might eventually act as an incentive on the Benchers to demolish the hideous pile called Temple Gardens.

Notes from the County Courts

THE PUZZLING STORY OF A COW

Wilson v. *Derby Market Auctions*, heard in the Derby County Court before His Honour Judge Willes, was such a case as might, if it had been fought in 1848 instead of 1948, have kept the Court of Common Pleas occupied from Michaelmas round to Trinity, so many and varied were the points which it raised. Here it is possible to summarise the facts only briefly and to refer to two of the legal problems raised.

In October, 1947, the plaintiff W purchased a cow at an auction sale conducted by E, a member of the defendant firm. The cow was then in calf and to the knowledge of both E and W was due to calve on the 3rd February, 1948. In fact she calved prematurely on the 10th November, 1947, and, as the judge found, W was well aware that this birth was premature. W promptly entered the cow for an auction sale to be held by

the defendant firm on the 14th November under the description "Newly calved Monday—Right in the Bag." One of the defendants' conditions for acceptance of entries for their sales was that: "All calved cows or heifers sold as new-milched or newly calved must have calved within fourteen days of sale and to their correct time," and such cows were sold under a corresponding warranty to purchasers. It was out of this second auction transaction that the litigation arose. It is important to point out that this second auction was held in quite a different part of the county from the first and was not conducted by E, but by N, another member of the defendant firm. E had no knowledge of the second transaction and N was quite unaware of the first. At the second auction the cow was knocked down to T for £51, but before taking delivery T received information which made him suspect the premature birth. Consequently he at first refused to accept the cow, but later took delivery under protest, refusing, however, to pay any part of the purchase price until he should have had certain veterinary tests carried out to determine the true condition of the cow. These tests subsequently established that the cow was suffering from contagious abortion.

An order made under the Diseases of Animals Act, 1894, makes it an offence, to put it shortly, for any person to sell a cow which to his knowledge or according to information furnished to him has prematurely calved within the two months preceding the sale, unless notice of these facts be given to the purchaser.

The plaintiff now claimed from the auctioneers the purchase price of the cow. The defendants brought in the purchaser T as third party. T counter-claimed against the defendants either for rescission or for damages for breach of contract, and on the pleadings upon which the case was ultimately tried, the defendants, in effect, adopted against the plaintiff the allegations made against themselves by the third party and counter-claimed for an indemnity.

On the facts as the learned judge found them the plaintiff's claim failed on the ground, *inter alia*, of illegality. The third party's claim against the defendants was successful, and to this it will shortly be necessary to refer in some detail. But before so doing it is convenient here to consider a point that arose on the defendants' claim to be indemnified by the plaintiff. Was the illegality of the transaction such as to taint the defendants' counter-claim as well as the plaintiff's claim? These two passages are cited from the judgment:—

> "I do not consider that the knowledge acquired by Mr. Else conducting a sale in another part of Derbyshire can or ought to be attributed to the firm of which he is a partner, and which, in his absence, accepted and carried out Wilson's criminal and illegal instructions. There is, of course, no suggestion whatever that Mr. Else was guilty of any act or default or committed or contemplated any offence or any improper conduct whatsoever."

And later:—

> "If the object of a contract is the commission of a wrong or an illegal act, a party ignorant of the illegal object may recover the value of services rendered before he became aware of the purpose of the contract (*Clay* v. *Yates* (1856), 1 H. & N. 73), and see the remarkable case of *Craven-Ellis* v. *Cannons, Ltd.* [1936] 2 K.B. 403, where an unqualified director of a limited company recovered on the basis of a *quantum meruit* the value of his service to the company employing him under an illegal written contract."

The judge therefore held the defendants entitled to be indemnified by the plaintiff against their liability to the third party. The moral justice of this conclusion could hardly be doubted. This is not to suggest by implication that the conclusion is open to doubt in point of law, but one tempting diversion might have led to a different result had the merits been less plain.

Section 16 of the Partnership Act, 1890, provides that: "Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner." Upon the bare words of the section it might be arguable that here the defendant firm, by virtue of E's antecedent knowledge of the cow's history, must be said to have had notice of facts from which, at the second auction, the true state of affairs must have been inferred. But this is to give the section the widest possible construction, whereas there appears to be good reason to construe it rather in the narrowest sense. It is said that "it would be absurd to hold that a firm has notice of everything done by each of its members" (Lindley on Partnership, 10th ed., p. 180); but, curiously, no specific authorities are cited for this proposition from which might be deduced a guiding principle to determine whether a case falls within the section or not. The present case, at all events, seems to furnish an excellent illustration of the "absurdity" suggested. If it is permissible, in construing s. 16 to examine the basis of the common-law doctrine of which the section is a particular expression, then it may be that notice to a partner is only notice to his firm of facts which the partner, as agent of the firm, has a duty to communicate to his principal. At all events the absence of any probability that the duty of communication will be performed seems to be the foundation of the express exception in the case of a fraudulent partner (*Re Hampshire Land Co.* [1896] 2 Ch. 743, at p. 749).

In effect, then, the plaintiff became directly liable to satisfy any claim established against the defendants by the third party. The learned county court judge deals with this part of the case in these terms:—

> "Thompson, the buyer, in the exercise of his right so to do, treated the contract of sale as repudiated because the cow did not answer her contract description. He refused to accept delivery from the sellers. The subsequent delivery of the cow to Thompson was against his will.
>
> "As bailee of necessity Thompson can recover, as damages, £7, the keep of the cow, and £1 paid for cartage. His claim for damages against the defaulting sellers under the repudiated contract of sale raises somewhat difficult questions. The position as I see it appears to be this. He bought a specific cow described and sold on terms and in circumstances which justified his refusal to accept delivery or to pay the price, and his election to treat the contract of sale as having been finally repudiated by the sellers. His action on that contract is for damages for non-delivery of a specific cow, bought and sold as a dairy cow. The buyer was a farmer. The sellers knew the buyer was a farmer. In the course of a protracted three-cornered trial, in which other difficult questions as to the legal position, rights and obligations of all three parties had to be discussed, it may be sufficient attention was not given to the questions relating to the measure and proof of the damages recoverable by Thompson, as buyer, against the auctioneers, as sellers of this cow. Section 51 of the Sale of Goods Act contemplates an action for non-delivery of goods for which there is an available market and of goods for which no such market exists. The general rule is expressed in these terms: 'the measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the sellers' breach of contract.' Thompson, as buyer, was in a difficult position. The cow was on his hands against his will. He had repudiated the contract of sale. The cow could not be sold or exposed for sale in a public market. She could only be sold (if at all) to a buyer who had notice that she had not calved to time. Thompson's right to reject was in dispute. To justify his rejection scientific investigations had to be made. Conflicting reports on blood tests seem to have come from the Midland Agricultural College to which different samples of blood were submitted. Under the contract Thompson should have had from the date of the sale a dairy cow which had calved to her correct time within fourteen days of the sale. His claim is for damages resulting from his not having such a cow delivered to him on the day of the sale. It may be said that his proper course was to go to a market and buy such a cow, if necessary, at a higher price, relying on his right to recover the excess from the defaulting sellers and assuming, or taking the risk of his success in proving that the cow he had rejected was properly rejected. There was no evidence and no suggestion that Thompson did take this course. I do not think it was really open to him. I think he was entitled to wait and see. During the period in which he waited he would, in the ordinary course of events, have lost the milk which the kind of cow he ought to have had might reasonably be expected to yield. The loss of that milk would involve damages. If I have sufficient material before me to justify my assessing or estimating the loss directly and naturally resulting from the breach of contract in not delivering a cow answering the contract description and warranty, I should say that, at the date of Thompson's counter-claim, he had certainly suffered damage to an amount of at least £21. He does not put his claim in that way. He claims rescission of the contract or, in the alternative, damages which are based upon the assumption that he has to keep the cow and pay the contract price for her subject to a set-off of the difference between the value of the cow he has to keep and pay for, and the value of the cow he should have received. I do not think that is the proper basis for his claim, but I think I can, as I do now, award him £21 damages against the

auctioneers, as defaulting sellers, for the non-delivery of a cow satisfying the contract description."

In the case of non-delivery of capital goods otherwise unobtainable, it is a well-established proposition that a buyer may recover damages on the basis that he has lost the working profit which those capital goods would have earned for him (see the cases cited in Mayne on Damages, 11th ed., p. 193). But before this principle can operate s. 51 (3) of the Sale of Goods Act, which enacts that " where there is an available market for the goods in question, the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price of the goods," must be effectively excluded. A purchaser's duty to buy elsewhere that which his vendor has failed to supply is perhaps the plainest of all illustrations of the duty to mitigate damages. It has been said that a plaintiff is not required to show " perfect knowledge or ideal wisdom " in the steps he takes in mitigation (*Jones* v. *Watney* (1912), 28 T.L.R. 399). But can a buyer whose action is held to have amounted to a justified rejection of goods tendered under a contract of sale rely upon his own failure to appreciate that legal result as giving him a *locus pœnitentiæ* in the matter of mitigating damages ? The learned judge clearly thought he could. With respect, this seems to be an extension of the principle beyond the scope of the existing authorities. It must often happen that a man has to decide upon a course of action upon mere belief in the existence of facts which would justify him in what he does, but which can only be verified by subsequent investigation. If he has decided wrongly he cannot then rely on his dilemma as excusing the error. It would seem to follow that if he has decided rightly he is equally bound by his own decision, and in claiming the consequential rights must accept the consequential obligations arising out of it.

N. C. B.

NOTES OF CASES

HOUSE OF LORDS

SANDPIT OR FARM: METHOD OF ASSESSMENT TO TAX

Russell *v.* Scott

Lord Simon, Lord Porter, Lord Simonds, Lord Normand and Lord Oaksey. 13th May, 1948

Appeal from the Court of Appeal, Northern Ireland.

The respondent taxpayer owned a farm in Londonderry. Underneath about one acre of the farm, sand existed in considerable depth. He allowed various persons to dig and take away sand. The sandpit thus formed was regularly and continuously worked from January, 1941, until October, 1944, when it was practically exhausted. The taxpayer employed a man to record the tonnage of sand taken in each case. That employee supervised the pit generally and directed the various contractors to the particular part of the face of the pit where each should work. There was a regular system for rendering accounts and receiving payments. The Crown claimed to assess the taxpayer on his profits from the sandpit for the previous year under No. III of Sched. A to the Income Tax Act, 1918, on the ground that it was a " concern of the like nature " with quarries, mines, ironworks, etc., previously specified in r. 4 of No. III. The taxpayer contended that he was assessable in respect of the sandpit on annual value under No. I of Sched. A. The Court of Appeal so held, and the Crown now appealed. The House took time for consideration.

LORD SIMON—the other noble lords concurring—said that the concern of working a sandpit, found to exist here, did not, in his opinion, fall within the concerns covered by r. 3 of No. III. The whole farm ought, therefore, to be assessed on annual value under the general rule. That involved the over-ruling of the *ratio decidendi* of *Mosley* v. *George Wimpey & Co., Ltd.* (1945), 27 Tax Cas. 315. Concerns for working china-clay had been customarily assessed under r. 3 of No. III. The present decision did not necessarily affect that practice. Appeal dismissed.

APPEARANCES: *The Attorney-General for Northern Ireland* (*L. E. Curran*, K.C.), *W. W. B. Topping*, K.C. (Northern Ireland Bar); *R. Hills* and *F. A. L. Harrison* (Northern Ireland Bar) (*Solicitor of Inland Revenue*); *C. King*, K.C., *W. F. McCoy*, K.C., and *H. A. McVeigh* (all Northern Ireland Bar) (*Rising and Ravenscroft*, for *William J. G. Seeds*, Belfast and Limavady).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

DIVORCE PROCEDURE: CO-RESPONDENT'S SIGNATURE

Gilbert *v.* Gilbert

Lord Merriman, P., Bucknill, L.J., and Wynn Parry, J. 12th May, 1948

Appeal from an order of Mr. Commissioner Stewart, sitting at Leeds.

The Commissioner, having granted the appellant husband a decree *nisi* on the ground of his wife's adultery, refused to condemn the co-respondent in costs on the ground that there was no proof of his signature on the acknowledgment of service of the petition, which was given in form 4 in App. 2 to the Matrimonial Causes Rules, 1947. The husband now appealed against that refusal, contending that it was not necessary to identify, as the signature of the co-respondent, the signature purporting to be his and appearing on the acknowledgement of service. By r. 8 of the Rules of 1947, which prescribes the procedure for the service of petitions, originating summonses and applications for ancillary relief " (2) . . . Provided that where the party to be served is a respondent, his signature or the acknowledgment of service shall be proved at the trial or hearing."

LORD MERRIMAN—BUCKNILL, L.J., and WYNN PARRY, J., agreeing—on a consideration of rr. 10, 14 and, particularly, 33, as illustrating the distinction drawn throughout between " respondent " and " co-respondent," concluded that, in the proviso to r. 8 (2), the word " respondent " must be read as exclusive of a " co-respondent." The effect of the proviso accordingly was that it was sufficient if a petition sent to the co-respondent by registered post came back with a signature on it purporting to be his. Appeal allowed.

APPEARANCES: *Karminski*, K.C., and *Alastair Sharp* (*W. O. Nicholl*, Law Society Services Divorce Department, Leeds, for *F. H. G. Craze*, Leeds). The co-respondent did not appear and was not represented.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

REGISTERED ACCOMMODATION: EXCLUSION OF RENT RESTRICTIONS ACTS

Baldwin *v.* Gurnsey

Tucker, Somervell and Cohen, L.JJ. 10th June, 1948

Appeal from Swansea County Court.

On 14th February, 1946, the respondent landlord agreed to let three rooms in her house to the appellant tenant unfurnished if she (the landlord) obtained a certain post abroad. On 22nd February she registered those rooms under reg. 68CB of the Defence Regulations as available for occupation by tenants. The landlord obtained her post abroad, and the tenant went into occupation of the rooms on 6th March. The landlord at all material times had furniture in all the remaining rooms in the house. On a claim by her for possession after expiry of due notice to quit, the tenant claimed the protection of the Rent Restrictions Acts, contending that the rooms were not " occupied " by the landlord, as required by para. (1) of reg. 68CB, when she registered them, and that only a letting subsequent to registration was excluded from the operation of the Rent Restrictions Acts by para. (6), whereas this tenancy, she contended, had come into existence before the registration. Regulation 68CB provides for the registration of accommodation which a person has " in any dwelling . . . occupied by him " and is willing to make available for tenants. By para. (6), accommodation registered and let in accordance with the registered terms and conditions is excluded from the operation of the Rent Restrictions Acts in respect of that letting.

TUCKER, L.J., said that the presence of the landlord's furniture in part of the house gave her occupation of the three rooms in question for the purposes of registration under reg. 68CB. In any event, the contention that the registration was invalid and para. (6) of the regulation accordingly inapplicable to the premises was not open to the tenant so long as the premises were in fact on the register. The registration (and, therefore, para. (6) of the regulation) would not have been effective if the premises had in fact been let to the tenant before registration, but the agreement entered into before registration had been subject to the landlord's obtaining her post abroad. No agreement was, therefore, in fact entered into until after the registration of the premises when the landlord ascertained that she had in fact obtained her post. Paragraph (6) was accordingly applicable, and the landlord was entitled to possession.

SOMERVELL, L.J., said that he reserved his opinion on the question whether, if it could be shown by proper evidence that the registration was irregular, the tenant could set up the irregularity in proceedings by the landlord for possession, or whether he would have first to take other proceedings for removal of the premises from the register.

COHEN, L.J., said that, while he did not dissent on the occupation point, he preferred to rest his judgment solely on the reason that, so long as the certificate of registration remained in force, the tenant could not evade the effect of para. (6). Appeal dismissed.

APPEARANCES: *Victor Ruston* (*Stephen Benson* with him) (*Rhys Roberts & Co.*, for *Myer Cohen & Co.*, Cardiff); *Morgan Blake* (*John B. Purchase & Clark*, for *D. O. Thomas*, Swansea).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RENT RESTRICTION: SHARING "KITCHENETTE"

Winters *v.* Dance

Tucker, Bucknill and Somervell, L.JJ.

20th July, 1948

Appeal from Bow County Court.

The defendant let to the plaintiff two rooms in his house, allowing him joint use with himself of a "kitchenette," bathroom and lavatory. The "kitchenette" was a small room measuring about 7 feet by 6 feet, and containing an electric cooker, an "Ideal" water heater and a table. The landlord gave the tenant a week's notice, intimating to him at the same time that his tenancy was not protected by the Rent Restrictions Acts. The tenant having failed to vacate the rooms, the landlord, during his absence, placed his furniture and effects in the garden, and locked him out of the premises. The tenant brought an action against the landlord for damages for trespass. The county court judge found that the "kitchenette" was not a living room, and held that he was not constrained by *Neale* v. *del Soto* [1945] K.B. 144, to hold that the demised premises were not let to the tenant as a separate dwelling, so that the letting was not protected by the Rent Restrictions Acts merely because the tenant shared cooking facilities with his landlord. He accordingly awarded the tenant damages. The landlord appealed.

TUCKER, L.J.,—BUCKNILL and SOMERVELL, L.JJ., agreeing—said that *Neale* v. *del Soto*, *supra*, *Sharpe* v. *Nicholls* [1945] K.B. 382, *Cole* v. *Harris* [1945] K.B. 474, *Kenyon* v. *Walker* (1947), 91 SOL. J. 42; 62 T.L.R. 602, and *Llewellyn* v. *Hinson* (1948), 92 SOL. J. 376; 64 T.L.R. 321, compelled the court to the view that as soon as it appeared that the relevant part of the premises could properly be described as a room, as was the case here, and, further, that it was used as a kitchen, it became a living-room within the meaning of that expression as used in the cases cited. If that living-room were shared, even if only for the purposes of cooking, then there was a sharing agreement and not a letting within the Rent Restrictions Acts. Appeal allowed. Leave to appeal to the House of Lords.

APPEARANCES: *John Elton* (*Kenneth Duthie & Co.*); *Ashton Roskill* (*Breeze, Benton & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

TRUST: POWER TO REINVEST IN REAL ESTATE

***In re* Wellsted; Wellsted *v.* Hanson**

Vaisey, J. 14th June, 1948

Adjourned summons.

The testator, who died in 1920, by his will made in 1915 gave his residuary estate, which comprised a substantial amount of realty, to his trustees on trust for sale upon certain trusts. At the material time the trust estate included (*a*) investments in trustee securities, the proceeds of the sale of real estate before 1926; (*b*) similar investments, the proceeds of such sales since 1925; and (*c*) balances of sales as in (*b*) awaiting investment. The trustees and the beneficiaries *sui juris* desired to reinvest these funds and the proceeds of further sales of real estate in the purchase of further real estate as an investment.

VAISEY, J., said that the question depended on s. 28 (1) of the Law of Property Act, 1925, which conferred on trustees for sale all the powers of a tenant for life and of the trustees of a settlement under the Settled Land Act, 1925. In *In re Wakeman* [1945] Ch. 177, Uthwatt, J., had stated, *obiter*, that the main point of the section was not to encourage dealings *in* land but to facilitate dealings *with* land. The section had also been considered in *In re Kempthorne* [1930] 1 Ch. 268, and *In re Stimpson* [1931] 2 Ch. 77. The problem was to discover whether the powers so conferred included those given by the Settled Land Act, 1925, s. 73 (1) of which provided that capital money should be invested in certain modes, including purchase of land in fee simple. The powers of ss. 38 to 72, 90 and 102 of the Settled Land Act, 1925, could not be in themselves excluded from the purview of s. 28 of the Law of Property Act, 1925, but it appeared that all such powers were given to persons holding land on trust for sale for their exercise in relation to such land and not otherwise. Land might be acquired, but with a view to the preservation or improvement of unsold land, and not as an investment. The trustees had no such power of reinvestment as they sought by the summons. If the expediency of the transaction could be sufficiently proved, they could obtain the leave of the court under s. 57 of the Trustee Act, 1925.

APPEARANCES: *Wilfrid Hunt*, *Jennings*, K.C., *A. G. N. Cross* (*Smith & Hudson*); *Milner Holland*, K.C., and *G. Haskett* (*Smith & Hudson*, for *Rollit, Farrell & Bladon*, Hull).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

REQUISITIONED PROPERTY: COMPENSATION: CAPITAL OR INCOME

***In re* Thompson; Westminster Bank, Ltd. *v.* Thompson**

Harman, J. 16th June, 1948

Adjourned summons.

A house which was comprised in a trust estate was requisitioned; after derequisitioning the trustees received £400 from the Department concerned in respect of damage done during the period of requisition. Section 2 (1) of the Compensation (Defence) Act, 1939, provides that compensation under the Act should be a sum reasonably payable by a tenant who undertook liability for rates, taxes, repairs and insurance, together with a sum equal to the cost of making good any damage. The tenant for life contended that (*a*) as compensation consisted of the aggregate of two forms of payment, both should go in the same direction, and (*b*) the rent received had been so much the less because the notional tenant was supposed to bear the cost of repair; hence the £400 should represent the difference between the payments under a repairing lease and a non-repairing lease, and was in the nature of additional rent.

HARMAN, J., said that, in order to succeed, the tenant for life must show that the money was the annual produce of the trust estate. Section 2 (3) of the Act provided that the dilapidation payments did not accrue until derequisitioning. Therefore it could not be regarded as annual income. Further, a dilapidation payment by the Crown made to compensate for damage to the inheritance was no more to be regarded as income than such a payment by a tenant. He would declare that the sum was capital.

APPEARANCES: *Wilfrid Hunt*; *E. I. Goulding*; *R. L. Megarry* (*Hilder, Thompson & Duncan*); *A. C. Nesbitt* (*Pennington & Son*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

MORTGAGE: ENFORCEMENT BY SUMMONS: PARTIES

Martin's Bank, Ltd. *v.* Kavanagh

Roxburgh, J. 14th July, 1948

Adjourned summons.

The defendant mortgaged certain premises to the plaintiffs in 1944, and was adjudicated bankrupt in 1947, but was permitted by the trustee to remain in possession. The plaintiffs took out an originating summons for possession against the defendant, without joining the trustee, in whom the equity of redemption had vested. The defendant contended (*a*) that there was no jurisdiction to proceed by originating summons, and (*b*) that the summons was defective in the absence of the trustee.

ROXBURGH, J., said that the terms of Ord. 55, r. 5A, clearly authorised a summons by a mortgagee to obtain "delivery of possession . . . by the mortgagor . . . or by any other person in, or alleged to be in possession." There was no implication that the defendant must be a person entitled to redeem. The words quoted had been introduced into the order immediately after the decision in *Temperance Permanent Building Society* v. *Nevitt* (1940), 84 SOL. J., 500, in order to take such a case as the present out of Ord. 13, r. 8, and bring it within r. 17 of that order. On the other hand, Ord. 55, r. 5B, provided that the persons to be served "shall be such persons as under the existing practice of the Chancery Division would be the proper defendants to an action for the like relief." The case already cited showed that the mortgagor was a necessary party, and the form of order under Ord. 55, r. 8A, contemplated this. The trustee ought to be a party under the "existing" practice, whether "existing" referred (as he thought) to the practice at the date of the application or to the practice at June, 1940, when such applications were

first allowed. The summons would be referred back to chambers for amendment by adding the trustee, and for further evidence on the question of costs.

APPEARANCES: *M. G. Hewins* (*Stocken, May, Sykes & Dearman*, for *Medley, Drawbridge & Co.*, Scarborough); *A. A. Baden Fuller* (*Gibson & Weldon*, for *Tasker Hart & Munby*, Scarborough).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

ADMINISTRATION: *RES JUDICATA*

In re Koenigsberg; Public Trustee v. Koenigsberg

Roxburgh, J. 16th July, 1948

Adjourned summons.

The testator, who died in April, 1941, by his will, made in 1936, appointed the Public Trustee as his sole executor and trustee, and gave three annuities to named persons "to be paid free of all deductions whatsoever and free of income tax at the time being deductible at the source"; the trustee was directed to appropriate investments to provide for each annuity, and on the death of each annuitant the fund appropriated for the annuity was to be paid to a named hospital. A number of pecuniary legacies were also given, and the residue was bequeathed to a number of charitable objects. In 1942 the testator's widow made a successful application for maintenance under the Inheritance (Family Provision) Act, 1938. In 1943, after the decision in *In re Waring* [1942] Ch. 426, but before that decision had been overruled in *Berkeley* v. *Berkeley* [1946] A.C. 555, the Public Trustee took out a summons for directions, to which the annuitants were parties. The summons asked, *inter alia*, whether he ought to appropriate against each annuity investments yielding an income to meet the said annuity and his income fee in respect thereof, and whether he ought to pay the annuities free of income fee. This question meant, as the law was then understood, first, whether the Public Trustee, assuming the will to have been "made" before 3rd September, 1939, in accordance with the decision in *In re Waring*, *supra*, ought to provide for the appropriations in accordance with s. 25 of the Finance Act, 1941, which provided that a provision for a tax free annuity in a will "made before 3rd September, 1939 . . . shall as respects payments falling to be made during any year . . . the standard rate of income tax for which is ten shillings in the pound, have effect as if for the stated amount there were substituted an amount equal to twenty twenty-ninths thereof" (and proportionate provisions for other rates of income tax were introduced by s. 20 of the Finance (No. 2) Act, 1945); secondly, whether the income fee was chargeable to the annuitants or to residue. An affidavit was filed showing that the estate was just sufficient, on the above footing, to meet the annuities. The court made an order on 1st December, 1943, directing that appropriations should be made for the annuities on the suggested basis, including the income fee. In *Berkeley* v. *Berkeley*, *supra*, the House of Lords held that, for the purposes of the section, a will was deemed to be made at the date of death, not at the date of signature. The Public Trustee took out a summons asking whether, having regard to *Berkeley* v. *Berkeley*, *supra*, he ought to treat the amount of the annuities as not being subject to modification in accordance with s. 25 of the Finance Act, 1941, as modified above.

ROXBURGH, J., said that it had been recently held (*In re Waring* [1948] 1 Ch. 221; *ante* p. 87) that parties to a decision in which *In re Waring* [1942] Ch. 426 had been applied were estopped by the rule of *res judicata* from afterwards taking advantage of *Berkeley* v. *Berkeley*, *supra*. The facts of the present case were different, in that it was reasonably clear that the real question in the summons of 1943 was that of the income fees; the annuitants and all parties had assumed, or admitted that, *In re Waring* [1942] Ch. 426 applied. As this assumption had not then been challenged or argued, to hold the annuitants to be bound by the former order would be to cause hardship, but the court could not on that ground avoid the consequences of a doctrine founded on the broad principles of public policy. A doctrine was set out in Spencer Bower on *Res Judicata*, at p. 104, where it was maintained that *res judicata* by implication arose in a case such as the present. This doctrine was fully supported by the observations of the Privy Council in *Hoystead* v. *The Commissioners of Taxation* [1926] A.C. 155. He must hold that the latter case applied, and the question raised by the summons must be answered in the negative. Costs of all parties out of the estate in due course of administration.

APPEARANCES: *Pennycuick*, K.C., and *Wigglesworth* (*W. R. Bennett & Co.*); *J. A. Wolfe* (*Bartlett & Gluckstein*); *J. A. Reid* (*Wilde, Sapte & Co.*); *Hon. B. L. Bathurst* (*W. R. Millar & Sons*); *Dunbar* (*Trollope & Winckworth*); *Victor Coen* (*M. A. Jacobs and Sons*); *M. J. Albery* (*Fladgate & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

PENSIONS: CANCER: ATTRIBUTABILITY

Kincaid v. Minister of Pensions; Styles v. Same

Denning, J. 7th May, 1948

Appeals from pensions appeal tribunals.

The two soldiers of whom the claimants were the respective dependants died suddenly of leukæmia (cancer of the blood). Both had rendered war service, but neither was otherwise unfit. The tribunals rejected their dependants' claims for pensions on the ground that the latest medical opinion was that leukæmia was not caused by or attributable to war service. The claimants appealed.

DENNING, J., said that, in considering past leukæmia cases, the courts had insisted that no claim should be rejected unless the Minister proved beyond reasonable doubt that the disease was not due to war service. He had himself, in *Long* v. *Minister of Pensions* (not reported) and *King* v. *Minister of Pensions* (1947), 1 War Pens. App. Rep. 809, allowed appeals because he thought the medical evidence insufficient to justify rejection of the claim. Here the tribunals, in the light of the latest medical knowledge, had held that the Minister had discharged the heavy onus lying on him. There was ample evidence for their conclusion. The results of these appeals would be far-reaching, for the medical evidence in them would be available in all future cases of the kind. Appeals dismissed.

APPEARANCES: *Crispin* (*Culross & Trelawny*); *H. L. Parker* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

MASTER AND SERVANT: CLAIM TO MONEY OBTAINED AS SERVANT

Reading v. R.

Denning, J. 10th May, 1948

Petition of Right.

The plaintiff, while serving as a sergeant in the Army, amassed considerable sums of money by frequently riding in full uniform from one part of Cairo to another on certain civilian motor lorries as to the contents of which there was no evidence. The military police, after making inquiries, took possession of sums standing to the plaintiff's credit at various banks in Egypt. He now claimed £13,632 in respect of them.

DENNING, J., said that the plaintiff had obtained the money because he was a sergeant in uniform in the British Army ready to accompany the lorries. The Crown was not entitled to keep the money simply because it was the Crown. There was no automatic forfeiture to the Crown. Its claim rested on the fact that it was the plaintiff's master. It was a principle of law that if a servant acquired money by virtue of his position as servant to his master, in the sense that the assets of his master or the servant's position as his servant were the cause of his obtaining the money as distinct from providing a mere opportunity for his obtaining it, he was accountable for that money to his master. The plaintiff here had obtained the money solely by reason of his position as the servant of his master. Judgment for the defendant.

APPEARANCES: *Salmon*, K.C., and *Cassel* (*Lewis & Lewis and Gisborne & Co.*); *Sir Hartley Shawcross*, K.C. (*A.-G.*), *Barry*, K.C., and *H. L. Parker* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

LEASE: "PERIOD OF PRESENT EMERGENCY"

Metropolitan Ground Rents, Ltd. v. Warwick Garages (London), Ltd.

Lord Goddard, C.J. 16th July, 1948

Action.

By a lease of 9th July, 1943, the plaintiff landlords let to the defendant tenants premises "for the period of the present emergency as defined by the Execution of Trusts (Emergency Provisions) Act, 1939, and for a term of six months thereafter." The landlords now claimed possession, contending that the lease had expired. By s. 1 (1) of the Validation of War-Time Leases Act, 1944, ". . . any agreement" granting "a tenancy for the duration of the war shall have effect as if it granted . . . a tenancy for a term of ten years," but either party may "determine the tenancy, if the war ends before the expiration of that term, by at least one month's notice in writing given after the end of the war." Section 1 (2) defines "the duration of the war" in relation to any agreement as a period which, on the proper construction of the agreement, ends with, or within a specified time after . . . the end of the emergency mentioned

in the Emergency Powers (Defence) Act, 1939 . . ." By the Execution of Trusts (Emergency Provisions) Act, 1939, " 'the period of the present emergency' means the period . . . ending " on a date to be declared by Order in Council. By Order in Council No. 1165 of 1948 the date in question was declared to be 31st May, 1948.

LORD GODDARD, C.J., said that the parties had intended that the lease should last for the period prescribed in the Execution of Trusts, etc., Act. As that was an indefinite term, the lease would have been void but for the Act of 1944. Nevertheless, he felt unable to disregard the last-mentioned Act of 1939, since the parties had chosen to define the period of the lease by reference to it. The agreed term therefore was, he thought, the period ending on 31st May, 1948, under that Act, plus the six months mentioned in the lease, plus the month given by the Act of 1944. The lease was therefore still subsisting. Judgment for the plaintiffs for rent claimed only.

APPEARANCES: *Holroyd Pearce*, K.C., and *Elliot Gorst* (*Layton & Co.*); *L. A. Blundell* (*Roney & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time :—

ISLE OF MAN (CUSTOMS) BILL [H.C.]. [22nd July.

Read Third Time :—

BRITISH TRANSPORT COMMISSION ORDER CONFIRMATION BILL [H.C.]. [21st July.

DARLINGTON CORPORATION TROLLEY VEHICLES (ADDITIONAL ROUTES) PROVISIONAL ORDER CONFIRMATION BILL [H.C.]. [19th July.

DARWEN CORPORATION BILL [H.C.]. [22nd July.

EGHAM URBAN DISTRICT COUNCIL BILL [H.C.]. [21st July.

EXPORT GUARANTEES BILL [H.C.]. [20th July.

GAS BILL [H.C.]. [21st July.

GREAT YARMOUTH PORT AND HAVEN BILL [H.C.]. [22nd July.

LONDON COUNTY COUNCIL (MONEY) BILL [H.C.]. [19th July.

MINISTRY OF HEALTH PROVISIONAL ORDER CONFIRMATION (BRISTOL) BILL [H.C.]. [22nd July.

MINISTRY OF HEALTH PROVISIONAL ORDER CONFIRMATION (EXETER) BILL [H.C.]. [22nd July.

MINISTRY OF HEALTH PROVISIONAL ORDER CONFIRMATION (HUDDERSFIELD) BILL [H.C.]. [22nd July.

MONOPOLIES AND RESTRICTIVE PRACTICES (INQUIRY AND CONTROL) BILL [H.C.]. [22nd July.

PIER AND HARBOUR PROVISIONAL ORDER CONFIRMATION (REDCAR) BILL [H.C.]. [19th July.

PIER AND HARBOUR PROVISIONAL ORDER CONFIRMATION (SWANAGE) BILL [H.C.]. [19th July.

PORTSMOUTH CORPORATION (TROLLEY VEHICLES) PROVISIONAL ORDER CONFIRMATION BILL [H.C.]. [19th July.

REPRESENTATION OF THE PEOPLE BILL [H.C.]. [22nd July.

ROCHDALE CORPORATION BILL [H.C.]. [22nd July.

ST. HELENS CORPORATION (ELECTRICITY AND GENERAL POWERS) BILL [H.C.]. [21st July.

SMETHWICK CORPORATION BILL [H.C.]. [19th July.

WHITSTABLE URBAN DISTRICT COUNCIL BILL [H.C.]. [21st July.

HOUSE OF COMMONS

Read Second Time :—

NATIONAL SERVICE BILL [H.L.]. [23rd July.

Read Third Time :—

AGRICULTURAL HOLDINGS BILL [H.L.]. [23rd July.

BEVERLEY CORPORATION BILL [H.L.]. [23rd July.

BIRMINGHAM CORPORATION BILL [H.L.]. [19th July.

BRITISH NATIONALITY BILL [H.L.]. [19th July.

CUMBERLAND COUNTY COUNCIL BILL [H.L.]. [22nd July.

INVERNESS BURGH ORDER CONFIRMATION BILL [H.L.]. [23rd July.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to Inverness Burgh.

LAYING OF DOCUMENTS BEFORE PARLIAMENT (INTERPRETATION) BILL [H.L.]. [23rd July.

PEABODY DONATION FUND BILL [H.L.]. [19th July.

PUBLIC REGISTERS AND RECORDS (SCOTLAND) BILL [H.L.]. [21st July.

STATUTE LAW REVISION BILL [H.L.]. [23rd July.

QUESTIONS TO MINISTERS

WAR DAMAGE (LATE CLAIMS)

Sir W. SMITHERS asked the Minister of Works if he will introduce legislation to provide that persons whose buildings were damaged by enemy action and who did not give notice of that damage by the due date can have their claims re-examined.

THE FINANCIAL SECRETARY TO THE TREASURY (Mr. GLENVIL HALL): No, sir. Full provision is already made for this matter in s. 31 of the War Damage Act. [19th July.

WAR DAMAGE (ADVANCE PAYMENTS)

Mr. ASSHETON asked the President of the Board of Trade why his Department does not accept the plea of undue hardship from limited liability companies when considering applications for advance payments under the War Damage Act (Business Scheme).

Mr. H. WILSON: While provision was made in Pt. II of the War Damage Act of 1941 for making advance payments on grounds of undue hardship to claimants under the private chattels scheme, there was no corresponding provision for claimants under the business scheme. This anomaly was corrected in the amending Act of 1942 in order primarily to meet cases of hardship where a person's means of subsistence depended largely on his or her interest in a small business which had sustained war damage. The conception of undue hardship is in both cases related to individual persons and was not intended to apply to limited companies as such. [22nd July.

DEVELOPMENT RIGHTS (COMPENSATION)

Mr. ERROLL asked the Minister of Town and Country Planning from whom claimants may obtain advice and assistance when completing form S.1 (claim for compensation for loss of development rights).

Mr. KING: From persons professionally experienced in the valuation of land. A contribution towards the fees incurred will be paid by the Central Land Board on the scale set out in their pamphlet S.1A, and subject to the conditions also set out in that pamphlet. [20th July.

PROFITS AND DIVIDENDS

Mr. HARDY asked the Chancellor of the Exchequer whether he will give any further guidance to one-man trading companies as to the amount of profits they should distribute to ensure that action will not be taken against them under s. 21 of the Finance Act, 1922.

Sir S. CRIPPS: As my predecessor explained in Finance Bill Debates, on 11th June, 1947, it is not the practice in present circumstances to take action against a trading company under s. 21 in a bona fide case where the rate of dividend is the same as that which was accepted by the Special Commissioners as reasonable in previous periods, even though the company's profits have increased. It is not necessary that there should have been any formal application to, or correspondence with, the Special Commissioners about the earlier periods. If, in fact, no directions have been made for the periods ending before June, 1947, the company may assume that its action was regarded as reasonable. If, for special reasons, no dividend at all was declared in the periods before June, 1947, and directions were not made by the Special Commissioners, they will not in present circumstances challenge the continuance of the company's policy. I must emphasise that this answer deals only with bona fide cases and will not apply where there are avoidance devices, such as the withdrawal of money from the company in the guise of capital. [22nd July.

TOWN AND COUNTRY PLANNING (DEVELOPMENT)

In a written answer to Brigadier MEDLICOTT, who asked for the amendment of the Town and Country Planning (Use Classes) Order, 1948, so as to provide that the use of existing, as distinct from new, premises as a council chamber and for any other use ancillary to the work of a local authority should not be deemed to be development within the meaning of the Act, THE MINISTER OF TOWN AND COUNTRY PLANNING stated that he did not think that it would be desirable to provide that the conversion of a dwelling-house for some other purpose which would be development if undertaken by a private developer would not be development if undertaken by a local authority.

[19th July.

RECENT LEGISLATION

Statutory Instruments 1948

No. 1678. **Act of Sederunt** (Certificate for Admission to Poor's Roll in Sheriff Courts), 1948. July 13.

No. 1663. **Exchange Control** (Blocked Accounts) Order, 1948. July 16.

No. 1643. **Local Government** (Allowances to Members) (Prescribed Bodies) Regulations, 1948. July 14.

No. 1653. **Railway and Canal Securities** (Conversion Date) (No. 9) Order, 1948. July 15.

No. 1646. **Supply of Office Machinery** (Restriction) (No. 4) (Revocation) Order, 1948. July 13.

No. 1648. **Supply of Typewriters** (Restriction) (No. 3) (Revocation) Order, 1948. July 13.

No. 1630. **Town and Country Planning** (Construction and Improvement of Private Streets, etc.) (Scotland) Regulations, 1948. July 14.

No. 1613. Town and Country Planning (Control of Advertisements) Regulations, 1948. July 12.

Command Papers (Session 1947–48)

No. 7468. Committee on County Court Procedure. (Chairman: The Honourable Mr. Justice Austin Jones, M.C.) First Interim Report. July 6.

Ministry of Town and Country Planning

Circular No. 56. Town and Country Planning (Control of Advertisements) Regulations, 1948. July 20.

Circular No. 57. Town and Country Planning (Local Authorities' Land: Exceptions to Section 82) Regulations, 1948. July 23.

Circular No. 58. Town and Country Planning Act, 1947. Land Ripe for Development before July 1, 1948. July 23.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, W.C.2.]

NOTES AND NEWS

Honours and Appointments

The King has approved recommendations of the Home Secretary that:—

Mr. William Gorman, K.C., be appointed Recorder of Liverpool in succession to the late Mr. Edward George Hemmerde, K.C.

Mr. Henry Ince Nelson, K.C., be appointed Judge of the Liverpool Court of Passage in succession to Lord Maenan, K.C. (formerly Sir William Francis Kyffin Taylor), resigned.

Mr. R. B. Morris, Assistant Solicitor in the Town Clerk's department at Bournemouth, has been appointed Area Secretary of the Merseyside and North Wales Electricity Board. He was admitted in 1945.

The Board of Inland Revenue have appointed Mr. J. D. Geake to act as Deputy Controller of Death Duties from 1st August, 1948. Mr. Geake, who entered the Inland Revenue in 1912, was called by the Middle Temple in 1917.

Mr. P. D. Wadsworth, Town Clerk of Accrington, has been appointed Town Clerk and Clerk of the Peace of Dudley. He was admitted in 1932.

Notes

The Treasurer of Lincoln's Inn, His Honour Sir Tom Eastham, K.C., and the Masters of the Bench, entertained the following guests at dinner on 21st July, which was Grand Day in Trinity Sittings: The Lord Chancellor, The Archbishop of York, Lord Catto, Lord Webb-Johnson, Mr. Chuter Ede, Lord Goddard, Lord Greene, Lord Merriman, Mr. Justice Ormerod, the Hon. Sir Albert Napier, the Lord Mayor of London, the Treasurer of the Middle Temple (Sir Edward Tindal Atkinson), Sir John G. Lang, and the President of The Law Society (Mr. W. Alan Gillett).

Mr. C. L. Townsend, the Stockton solicitor and cricketer, was, at the annual meeting of the Durham and North Yorkshire Law Society in the Imperial Hotel, Darlington, on 8th July, presented with a set of ivory-backed hair brushes in a case and an electric clock in recognition of his twenty-five years' service as secretary, from which position he retired last year.

The Society of Public Teachers of Law held its fortieth annual general meeting at Oxford on 9th and 10th July. A paper was read by Evershed, L.J., on "Equity after Fusion: Federal or Confederate?" The society later entertained the following guests at dinner: Lord Normand, Lord Justice Evershed, Sir David Smith, Chancellor of the University of New Zealand, the Warden and the Domestic Bursar of Merton College, Professor Herlitz, of the University of Stockholm, Mr. J. B. Leaver, Chairman of the Legal Education Committee of The Law Society, and Mr. E. H. V. McDougall, Under-Secretary of The Law Society. Professor Hughes Parry was elected President, Professor Arthur Goodhart, Vice-President, Mr. P. A. Landon, Hon. Treasurer, and Professor D. J. Ll. Davies, Hon. Secretary. Dr. Stallybrass gave an address on "Law in the Universities."

Under powers given him by the Local Government Act, 1948, the Minister of Health has made the Local Government (Allowances to Members) (Prescribed Bodies) Regulations, 1948. Under these, Standing Joint Committees, Combined Police Authorities, Local Fisheries Committees and the Metropolitan Water Board are now among the bodies of which the members are entitled, under the Local Government Act, 1948, to financial loss allowance and travelling and subsistence allowances in relation to the performance of their duties. The Regulations have effect from 1st August, 1948.

PROVINCIAL LAW SOCIETIES

At the fifty-sixth annual meeting of the Hampshire Incorporated Law Society, held at the Guildhall, Winchester, on Friday, the 16th July, 1948, the following officers were elected: Mr. J. G. Stanier, Winchester, President; Mr. C. F. Hiscock, Southampton, Vice-President; Messrs. K. F. Allen, Portsmouth, C. H. S. Blatch, Lymington, R. C. Brooks, Basingstoke, and M. H. Pugh, Southampton (re-elected), and A. R. Lightfoot, Southampton, members of the Committee; Mr. L. F. Paris, Hon. Secretary and Hon. Treasurer; Mr. C. G. A. Paris, Assistant Hon. Secretary. Particular reference was made by the President to the sum of £1,000 which had been vested by Mr. H. Wills Chandler, a past President, of Basingstoke, in memory of his mother, upon trust as to capital and income for the benefit of widows of limited means, with a son or daughter supporting them who becomes articled to a member of the Society practising in Basingstoke, Alton, Andover, Fleet, Aldershot or Winchester.

Wills and Bequests

Mr. S. H. Jackson, solicitor, of Ulverston and Barrow-in-Furness, left £135,368.

Mr. C. U. Jagger, retired solicitor, of Harborne, Birmingham, left £112,173, with net personalty £108,002.

Mr. A. J. H. Williams, formerly Coroner for Monmouth and district, left £10,452, with net personalty £10,337.

Mr. Godfrey Sykes, retired solicitor, of London, left £112,533 gross, £109,913 net.

Mr. F. J. F. W. Isaacson, barrister-at-law, left £417,444.

OBITUARY

Mr. R. J. GWYNNE

Mr. Reginald James Gwynne, solicitor, of Messrs. R. Gwynne and Sons, of Wellington, Shropshire, died on 16th July, aged forty-six. He was admitted in 1927.

Mr. A. RENDALL

Mr. Athelstan Rendall, solicitor, of Messrs. Rendall, Litchfield and Co., of Bournemouth, died on 12th July, aged seventy-seven. He was admitted in 1894. He was M.P. for Thornbury, Gloucestershire, from 1906 to 1922 and again from 1923 to 1924.

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